

Oklahoma Regulation Confiscating Money Order From Other Prisoner's Family Upheld

The Tenth Circuit Court of Appeals has upheld an Oklahoma State Penitentiary (OSP) regulation that allows money sent to prisoners by a person on another prisoner's visitation list to be classified as contraband and confiscated by OSP.

The action was brought by OSP prisoner George W. Steffey, alleging due process violation by depriving him of property. Pam Grubb, the mother of another OSP prisoner, sent Steffey a fifty-dollar money order. Upon receipt, OSP officials gave Steffey notice that Grubb was on another prisoner's visit list, and that under OSP-120230-02 the money order was con-

triband and was being confiscated without opportunity to return to the sender.

Steffey filed administrative remedies, which were denied, before he brought his civil rights action. The Oklahoma federal district court granted prison officials summary judgment, holding that because the money had never been deposited into Steffey's "inmate trust account," he never acquired a "property interest in the contraband money order."

While agreeing with the district court's ruling, the Tenth Circuit took the matter a step further. First, that court said OSP officials had a legitimate interest to prevent prisoners "from using their family

members to pay off their drug, gambling, or other debts to other inmates, or from exporting money from an inmate's family with threats of harm." Next, the court held the deprivation of the money order was not an "atypical and significant hardship" under *Sandin v. Conner*, 515 U.S. 471 (1995).

The Court said the regulation was valid and was a typical insignificant deprivation. Accordingly, it affirmed the district court's order. It should be noted the outcome may have been different if the sender had brought suit, as she had a property interest in the money. See: *Steffey v. Orman*, 461 F.3d 1218 (10th Cir. 2006). ■

News in Brief:

California: On November 17, 2006, Orange county jail prisoners Garrett Aguilar, 23; Stephen Carlstrom, 38; Michael Garten, 21; Eric Miller, 21; Jared Petrovich, 22 and Christopher Teague, 30, were charged with the murder of jail prisoner John Chamberlain, 41, who was beaten to death on October 5, 2006. Chamberlain was in jail for possession of child pornography. His was the first murder in the Orange county jail since 1988.

Cambodia: On June 18, 2006, eight prisoners and one prisoner guard at the Battambang prison were killed when several dozen prisoners attempted to escape by taking a guard hostage. When police surrounded the prisoners and their hostage guard the prisoners' leader detonated a hand grenade killing himself and the other seven prisoners and their hostage. No prisoners escaped. A week earlier on June 11, 12 pre trial detainees escaped from the Prey Sar prison in Phnom Penh by cutting through the bars.

Illinois: On October 6, 2006, an autopsy on Dennis Lane, 35, who had collapsed while in custody at the Peoria county jail, discovered 8 ruptured plastic bags of unidentified drugs in his stomach. Lane had been arrested on drug charges earlier.

Iowa: On November 1, 2006, Deke Glien, 75, an administrator with the Dallas county jail was arrested and charged with raping female prisoners in the jail. He is charged with forcing prisoners to have sex with him and spying on showering female prisoners through a porthole device.

Kentucky: On November 13, 2006,

Shamoni Peterson, 32, a prisoner at the US Penitentiary Big Sandy was stabbed to death. On October 24, 2006, Calvin Speight, 42, another prisoner at the facility, was also stabbed to death. These are the first murders at the prison which opened in 2003. Both men were from Washington D.C.

Kentucky: On October 25, 2006, Alice Stapleton, 30, a guard at the US Penitentiary in Big Sandy, was indicted on charges she was paid \$1,000 bribes on three occasions to smuggle heroin, marijuana and cell phones to Personne McGhee, a prisoner at the facility, after receiving them from his mother Clady McGhee. Also charged with Stapleton are prisoner Kenneth Bates, Maria Mims and Temeka Haliburton who allegedly helped transport the drugs to Kentucky. The McGhees were not charged.

New Jersey: On December 21, 2006, Bureau of Prisons guard Samuel Bethea, 41, was arrested at home on charges of smuggling cell phones and tobacco into the federal prison at Ft. Dix for a prisoner acting as a confidential informant in exchange for bribes. On October 26, 2006, FCI Ft. Dix guard Timberly Gamache, 35, pleaded guilty in federal court to conspiring with prisoner Hasan Thomas to smuggle cell phones and tobacco into the prison.

New York: On November 18, 2006, Rensselaer county jail guard David Rohrmiller was sentenced to 1 to 3 years in state prison for raping two female prisoners in the jail. He had previously

been convicted in federal court of lying to FBI agents about the rapes and violating the prisoners' civil rights and sentenced to 8 years for those offenses. The state sentence will run concurrent to the federal sentence.

North Dakota: On October 26, 2006, Moe Maurice Gibbs, 34, a former jail guard at the Barnes County Correctional Center in Valley City was charged with six counts of raping female prisoners in his care at the jail. Gibbs was already in jail awaiting trial on unrelated murder charges when he was charged with raping the prisoners. Police have also linked him to a 2004 rape in Bismarck via DNA evidence. Gibbs legally changed his name in 2005 from Glen Morgan Jr.

Ohio: On December 29, 2006, Nicholas Diehl, 60, a civilian employee at the Hamilton county jail was charged with theft for stealing toilet paper from the jail.

Oklahoma: On October 31, 2006, Darrin Brewer, 39, was sentenced to 10 years in prison for selling drugs to other prisoners. Brewer's wife LaShanda, collected over \$60,000 in payments for the drugs that were smuggled in by guards for Brewer to sell at the Geo Corporation run Lawton Correctional Facility.

Texas: On November 1, 2006, Porsche Simon, a lieutenant at the Stiles Unit resigned after being notified she was being investigated for smuggling drugs into the prison.

Texas: On October 17, 2006, Roy Rogers Robinson, 25, a guard at the Telford unit prison, was arrested on charges

of trying to steal money from an ATM machine at the Ambassador Inn hotel in Texarkana.

Texas: On October 19, 2006, death row prisoner Michael Johnson, 29, cheated the executioner by committing suicide 16 hours before his scheduled execution by slashing his jugular vein and an artery in his arm with a razor blade. Using his own blood Johnson wrote "I didn't shoot him" on the wall of his cell. Johnson had been condemned to death for a shooting death in which his accomplice, David Vest, who received an eight year sentence in exchange for his testimony against Johnson, was released from prison in 2003. Johnson is the seventh condemned prisoner in Texas to commit suicide since 1974.

Uruguay: On November 17, 2006, former military dictator Juan Maria Bordaberry, 78, and his former foreign minister Juan Blanco, were arrested and charged with four murders of political dissidents in 1976. The United States backed Bordaberry's dictatorship and for years armed and trained the nation's police in torture and murder techniques which were used to successfully crush all political dissent in the small nation between 1973-

1985. The arrests come after the recent election of President Tabare Vasquez who promised to make human rights a priority and to end decades of impunity for military torturers and killers if elected.

Washington: On November 16, 2006, Kevin Achartz, 40, a prisoner at the Washington State Penitentiary, died of injuries suffered in a beating by other prisoners on November 19 without regaining consciousness. Achartz was convicted in 2005 of sexual exploitation of a minor after filming himself having sex with a 17 year old boy and was sentenced to life without parole due to prior convictions for rape, burglary, assault and theft, among other things under the state's three strikes law. Prison officials are investigating the murder.

Washington: On November 3, 2006, Joel Diven, 72, a dentist at the McNeil Island Corrections Center, had his dental license suspended after he fractured the tooth of a prisoner on May 24 and then proceeded to extract part of the prisoners jawbone. The prisoner was sent to Harborview Medical Center in Seattle after Diven "abandoned" the patient who was bleeding profusely, had dropping blood pressure and a blocked airway. Diven resigned from his Department of

Corrections job the same day his license was suspended. *PLN* has reported extensively on medical neglect in Washington prisons.

Wisconsin: On November 3, 2006, Columbia Correctional Institute guard Mary Gilmore, 25, was charged with stealing methadone pills from prisoners. Gilmore told prison investigators she stole the pills because she "wanted to know what her sister, who had overdosed on it (methadone), was thinking." Gilmore now claims investigators tricked her into falsely confessing to the theft of some 54 methadone pills over a six week period. ■

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Tenth Circuit Reinstates Colorado Ad Seg Conditions Claims

by Bob Williams

The United States Court of Appeals for the Tenth Circuit has reversed a Colorado state prisoner's administrative segregation (Ad Seg) conditions of confinement claims which were dismissed as frivolous by the United States District Court for the District of Colorado.

Ronald Fogle was housed in continuous Ad Seg confinement in three state prisons from September 2000 to August 2003. He was locked down all but five hours per week and alleges he was denied access to a telephone, showers, outdoor exercise, law library, and programs offered to the general population.

In June 2005, Fogle filed a 42 U.S.C. § 1983 complaint alleging numerous claims. He sought pauper status which was granted. He then paid the entire filing fee but because pauper status was initially granted, the district court undertook a review of the claims for frivolousness pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). All claims were dismissed as frivolous.

On appeal, the Tenth Circuit held that a due process claim stemming from Ad Seg placement hearings was not

frivolous. The district court abused its discretion in concluding Fogle's three-year Ad Seg placement was not atypical and significant, under *Sandin v. Conner*, 115 S.Ct. 2293 (1995), and thus had no arguable basis.

The Court also found Fogle's claim of cruel and unusual punishment in denial of outdoor exercise was not frivolous. The district court erred when it claimed Fogle could only raise an arguable claim if denied *all* exercise and again erred when it claimed Fogle did not allege deliberate indifference on the guard's part—he did.

Construing Fogle's pleading liberally, the Court deduced a retaliation claim wherein guards threatened Fogle with transfer and long-term segregation if he did not stop complaining about his conditions. Fogle did not stop and was transferred. Interpreting "complaining" as a right to grieving or appealing, the Court found that "several circuits have

held that a prisoner's First Amendment right to petition the government for redress of grievances encompasses the filing of inmate administrative appeals."

Claims for denial of all religious fellowship and access to the law library or other forms of state-provided legal assistance gleaned from Fogle's prose, were deemed non-frivolous. The five surviving claims were remanded for further proceedings to address the merits. The Court noted on remand that a statute of limitations issue, raised by the district court for some claims, may be subject to the rare equitable tolling for "extraordinary circumstances" recognized by the Colorado Supreme Court in *Morrison v. Goff*, 91 P.3d 1050, 1053 (Colo. 2004) (*Morrison* did not apply equitable tolling to a prisoner nor has a Colorado court held that a prisoner fell into the "other legal disability" category for statutory tolling exceptions). See: *Fogle v. Pierson*, 435 F.3d 1252 (10th Cir. 2006). ■

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Amnesty International

Compile information about prisoner torture, beatings, rape, etc., to include in reports about U.S. prisons distributed worldwide. Write: Amnesty International, 322 8th Ave., New York, NY 10001.

Children of Incarcerated Parents

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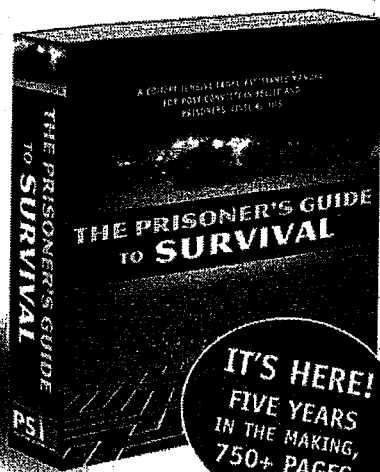
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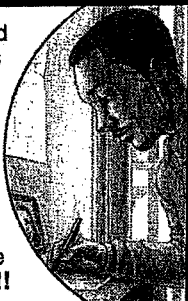
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